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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Serial No. 75/758998

Dunham's Athleisure Corporation,)
)
Opposer,)
v.)
)
New Balance Athletic Shoe, Inc.,)
)
Applicant.)

06-07-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Opposition No. 91159972

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, Attn: TTAB, on the date set forth below.

June 4, 2004
Date of Signature and of Mail Deposit

By: Thomas V. Smurzynski
Thomas V. Smurzynski
Attorney for Applicant

**APPLICANT'S MOTION
TO DISMISS OPPOSITION**

Applicant, New Balance Athletic Shoe, Inc. (hereinafter "New Balance"), hereby moves that the Opposition be dismissed as inappropriately initiated because the application involved, Serial No. 75/758998, was one for the Supplemental Register, and should never have been published for opposition.

Applicant discovered the facts on which this motion is based when it reviewed documents to prepare a response to Opposer's discovery requests.

The facts on which this motion is based are found in the file of the opposed application, Serial No. 75/758998.

Application Serial No. 75/758998 was originally filed by a company called The Source-i, Inc., which was not related to either the present owner of the application, New Balance, or the Opposer, Dunham's Athleisure Corporation. The application by The Source-i, Inc. was initially

rejected in an Office Action dated November 22, 1999, on Section 2(d) grounds, because of registrations owned by New Balance, and on Section 2(e) grounds, that the mark was primarily merely a surname. Eventually the application was assigned to New Balance in an assignment recorded December 19, 2000 at Reel/Frame 002201/0992.

In a paper filed with the Patent and Trademark Office on January 3, 2001, New Balance, the new owner of the application, requested amendment to the Supplemental Register and suspension of the application while the assignment was recorded. In an Office Action dated March 12, 2001, the Examining Attorney acknowledged that the application had been amended to the Supplemental Register, and that action was otherwise suspended pending recordal of the assignment to New Balance. On March 28, 2001, New Balance submitted a copy of the Notice of Recordation of the assignment to New Balance, to the Examining Attorney.

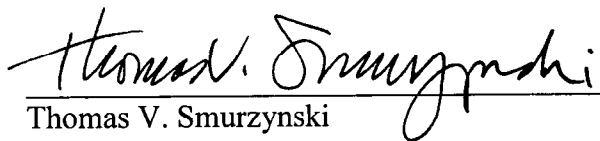
The next action by the Patent and Trademark Office was publication of the application in the Official Gazette on March 26, 2002, leading, eventually to this opposition.

That the application had been amended to the Supplemental Register, and should have issued directly as a registration on the Supplemental Register, was overlooked by the Patent and Trademark Office, and by New Balance, the assignee of the application.

A review of the file, in preparation for responding to Opposer's discovery requests, brought the error to Applicant's attention.

Accordingly, Applicant requests that this opposition be dismissed, and that the application be returned to the Examination Division for issuance as a registration on the Supplemental Register.

Respectfully submitted,

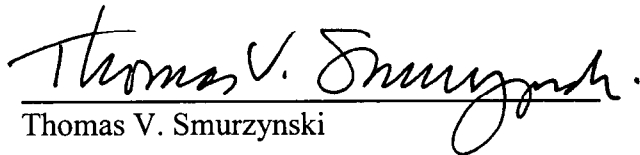


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Dated: June 4, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S MOTION TO DISMISS OPPOSITION was served by first-class mail, postage prepaid, on counsel for Opposer, Robin S. Lederman, Esq., Brooks Kushman P.C., 1000 Town Center, 22nd Floor, Southfield, MI 48075, this 4th day of June, 2004.


Thomas V. Smurzynski